

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 44.00: LICENSING OF FOREIGN TRANSMITTAL AGENCIES

Section

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44.01: Purpose and Scope

The purpose of 209 CMR 44.00 is to establish procedures and requirements for the licensing and supervision of foreign transmittal agencies under the provisions of M.G.L. c. 169.

Nothing contained in 209 CMR 44.00 shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application, or to require information in addition to that required by the application form provided to the applicant.

44.02: Definitions

As used in 209 CMR 44.00, the following words shall, unless the context otherwise requires, have the following meanings -

Applicant - All persons who engage or are financially interested in the business of receiving deposits of money for the purpose of transmitting the same or equivalents thereof to foreign countries who is required to be licensed under M.G.L. c. 169, § 1.

Commissioner - The Commissioner of Banks

Licensee - Any person who is licensed by the Commissioner as a foreign transmittal agency under M.G.L. c. 169 and 209 CMR 44.00.

Person - A natural person or an organization including a corporation, partnership, association, cooperative or trust.

44.03: Application Procedures

(1) Application. Each Applicant for a license as a foreign transmittal agency shall submit a written application on a form prescribed by the Commissioner, signed under the pains and penalties of perjury, containing such information as the Commissioner may from time to time require.

(2) License Requirements. An Applicant shall be required to submit detailed information supporting the following general requirements:

- (a) Financial responsibility. An Applicant as a foreign transmittal agency shall demonstrate and provide the Commissioner with evidence of its financial responsibility and submit a sworn statement which states that the Applicant meets the foregoing requirement.

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- (b) Financial statement. If audited financial statements were not prepared, an Applicant shall submit financial statements for the preceding fiscal year(s), signed under the pains and penalties of perjury, and such other financial information as the Commissioner may require.
- (c) Character and Fitness. An Applicant shall submit information demonstrating that the Applicant possesses the character, reputation, integrity, and fitness to engage in the business of a foreign transmittal agency in an honest, fair, sound and efficient manner.
- (d) Business Experience. An Applicant shall demonstrate to the Commissioner's satisfaction that the Applicant, and its applicable officers and employees, possess the necessary educational and business experience to engage in the business of a foreign transmittal agency.
- (e) Other Information. An Applicant shall submit such other information the Commissioner may deem necessary to properly evaluate an application.

(3) Bond. Each Applicant shall execute and deliver a bond and sureties thereon to the State Treasurer in such amounts as determined by the Commissioner under M.G.L. c. 169, § 2 and 209 CMR 44.03(3). Such bond shall be examined and approved by the Commissioner and the State Treasurer in accordance with M.G.L. c. 169, § 3 prior to the issuance of any license to engage in the business of a foreign transmittal agency.

44.04: Licensing Standards

(1) A license to engage in the business of foreign transmittal agency will be issued to an Applicant if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of M.G.L. c. 169, § 6 and 209 CMR 44.03 have been met.

(2)(a) The Commissioner may deny an application to engage in the business of foreign transmittal agency, if the Commissioner upon review of the application and other relevant information, determines that the Applicant has not satisfied the requirements of M.G.L. c. 169 or 209 CMR 44.03.

(b) The Commissioner may also deny such an application if the Applicant has:

1. violated any provision of M.G.L. c. 169 or 209 CMR 44.00;
2. violated or engaged in a pattern of violations of any state or federal law applicable to the conduct of the business of a foreign transmittal agency and any rule, regulation or administrative order or directive promulgated thereunder;
3. conducted, or will conduct, its business in an unsafe and unsound manner; or
4. engaged in conduct which has resulted in the suspension or revocation of its license to engage in the business of a foreign transmittal agency by the licensing authority of any other state.

(3) An Applicant whose application has been denied under 209 CMR 44.04(2) may appeal the Commissioner's action under M.G.L. c. 30A.

44.05: Books and Records

(1) Each Licensee shall keep and use within the Commonwealth its books, records and accounts in a manner which will allow the Commissioner to determine whether the Licensee is complying with the provisions of M.G.L. c. 169 and applicable state and federal laws and regulations.

(2) Every Licensee shall preserve its books and records for inspection for a minimum of three years. The Commissioner may also prescribe the extent to which such books, records and accounts shall be audited. Additional audits by independent certified public accountants shall be conducted whenever the Commissioner deems it expedient. The cost of all such audits shall be borne by the Licensee.

44.06: Annual Reports

A Licensee shall, annually on or before January 31, file an annual report with the Commissioner. The Licensee shall submit the following information:

- (1) financial statements, as of December 31 of the preceding year, signed under the pains and penalties of perjury;
- (2) aggregate and other information on the amount of funds transmitted abroad and the profit or loss derived from such activity; and,
- (3) any other information which the Commissioner may require from time to time.

44.07: Escrow Accounts

- (1) All funds of clients deposited with a Licensee for transmittal to a foreign country shall be deposited in one or more trust accounts maintained at a federally insured bank. Said account(s) shall contain only those funds collected for transmittal.
- (2) Such Licensee may offset funds in the trust account(s), in order to effect the transmittal of funds to foreign countries in accordance with the directions of clients.
- (3) The Licensee shall maintain complete and accurate trust account records. The Licensee shall produce, upon request, all documents pertaining to trust account activity, including, but not limited to, bank statements, check stubs, canceled, voided or unused checks, deposit tickets, and reconciliations or other comparable account records.
- (4) No person licensed as a foreign transmittal agency shall commingle money collected for transmission abroad from clients with its own funds or use any part of a client's money in the conduct of the Licensee's business.

44.08: Change in Personnel or Ownership

- (1) If any change occurs in the ownership of a Licensee, or in the name or residential address of the Licensee, or the office manager or of the person or persons in charge of an office, a notice shall forthwith be filed with the Commissioner who may thereupon cause such investigation to be made as he deems necessary, as if it were a new license. In the case of a Licensee which is a corporation, a change in the ownership of 10% or more of the stock thereof shall subject such corporation to the provisions of the preceding sentence.
- (2) A notice of change in personnel or ownership shall contain the following information:
 - (a) the name, address and occupation of each new officer, partner, director or shareholders; and
 - (b) provide such other information as the Commissioner may require.

44.09: Office Locations

- (1) Branch Locations A Licensee shall obtain a separate license under M.G.L. c. 169 and 209 CMR 44.00 in order to conduct business at another location.
- (2) Relocations and Closings Licensees shall obtain the Commissioner's written prior approval of any change in or closing of a Massachusetts location. Written application to the Commissioner shall be made prior to any such change or closing and shall contain such other information as the Commissioner may require.
- (3) License Posting A Licensee shall prominently post the license issued by the Commissioner under 209 CMR 44.04(1) in its place of business. No Licensee shall operate under a name other than the name on the license issued by the Commissioner.

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(4) Business Office A Licensee shall file with the Commissioner a schedule of days and hours its office location will be open. The location shall be physically manned, not by use of an answering device, during the days and hours which have been filed with the Commissioner. Any change in such schedule shall be reported, in writing, to the Commissioner at least five days before such change shall become effective.

44.10: Prohibited Practices

Grounds for license revocation under M.G.L. c. 169, § 12 and the issuance of cease and desist orders under M.G.L. c. 169, § 13 shall include, but are not limited to, the following prohibited acts and practices by Licensees:

- (1) implying that such Licensee is a branch of or associated with any agency or department of the Federal Government or of any state or municipal government, or use of any seal, insignia, envelope or other format which simulates that of any government department or agency.
- (2) implying that it is a bank or to act in any manner so as to lead the public to believe that its business is that of a bank or otherwise violate the unauthorized banking provisions of M.G.L. c. 167, § 37.
- (3) failing to disclose the type and number of its license(s) to all clients in writing at the time deposits for transmittal abroad are accepted or to fail to disclose the type and number of its license(s) in all advertisements.
- (4) failing to provide a receipt, on a form approved by the Commissioner, for deposits of money received for transmission to a foreign country.
- (5) failing to forward all money received for transmission to a foreign country to the person to whom the same is directed within seven days following receipt thereof.

44.11: Effective Date

209 CMR 44.00 shall become effective April 24, 1992.

REGULATORY AUTHORITY

209 CMR 44.00: M.G.L. c. 169, § 7.